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6 Attorneys for Ahmed Said,  
sued herein as Defendant  
7 TENDERLOIN GROCERY

8 UNITED STATES DISTRICT COURT  
9  
10 NORTHERN DISTRICT OF CALIFORNIA

11 LORILLARD TOBACCO COMPANY, a  
Delaware corporation,

Case No. C 05 – 3123 CW

12 Plaintiff,

**COUNTER CLAIM FOR DAMAGES**

13 v.

**AND DEMAND FOR JURY TRIAL**

14 TENDERLOIN GROCERY, a business  
15 entity; AHMED SAID, an individual; and  
DOES 1 – 10 inclusive,

16 Defendants.  
17 \_\_\_\_\_/

18 AHMED SAID, an individual doing  
business as TENDERLOIN GROCERY

19 Counter Claimant

20 v.

21 LORILLARD TOBACCO COMPANY, a  
22 Delaware corporation

23 Counter Defendant  
24 \_\_\_\_\_/

25 Defendant AHMED SAID, an individual doing business as Tenderloin Grocery, (“Counter  
26 Claimant”), hereby sues and counter claims against Plaintiff and Counter Defendant LORILLARD  
27

28 COUNTER CLAIM

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1 TOBACCO COMPANY, a Delaware corporation, ("Counter Defendant"), as follows:

2 **FIRST COUNT**

3 [BREACH OF CONTRACT]

4 1. At all times herein alleged, Counter Defendant has done and now does business in this  
5 judicial district. At all times herein relevant, Counter Defendant has been and does now engage in  
6 the business of manufacturing and selling cigarettes, including the brand Newport <sup>TM</sup> cigarettes in  
7 this judicial district.

8 2. At all times herein relevant, Counter Claimant has and does now operate a certain  
9 retail store located at 62 Turk Street, San Francisco, California. This store is known as the  
10 Tenderloin Grocery.

11 3. Within the last two years, in this judicial district, Counter Defendant and Counter  
12 Claimant entered into certain oral and written agreements pursuant to which Counter Defendant  
13 agreed pay Counter Claimant certain sums of money in consideration for Counter Claimant's  
14 purchase and sale of Counter Defendant's cigarette products, including Newport <sup>TM</sup> cigarettes.  
15 Pursuant to said agreements, Counter Defendant agreed to pay to Counter Claimant certain  
16 "rebates", "pay downs", pay backs, or other payments directly related to the volume of Counter  
17 Defendant cigarette products purchased by Counter Claimants for Counter Claimant's resale to the  
18 public in Counter Claimant's said grocery store.

19 4. At all times herein alleged, Counter Claimant has performed each and every term and  
20 condition on his part to perform with respect to each of said agreements with Counter Defendant,  
21 save and except any terms and or conditions which Counter Claimant was prevented or exempted  
22 from performing due to the breaches, actions or other wrongs of Cross Defendant, all according to  
23 proof at trial herein.

24 5. Implied in said agreements by and between the parties was and is the covenant of  
25 good and faith and fair dealing, which among other things, imposed certain duties on Counter  
26 Defendant to refrain from doing anything which would frustrate and or prevent Counter Claimant  
27 from obtaining the full benefit and all payments contemplated by said agreements.



1 17200 et. seq.

2 11. As a direct, proximate and foreseeable result of Counter Defendant's unfair  
3 competition, and unfair business practices as alleged herein, Counter Claimant has been damaged,  
4 all according to proof at trial herein.

5 12. Counter Claimant alleges that Counter Defendant's actions were intentional,  
6 wrongful, malicious and undertaken by Counter Defendant with conscious deliberation so as to  
7 cause Counter Claimant great damage. As a direct, proximate and foreseeable result of Counter  
8 Defendant's intentional and malicious actions, Counter Claimant prays for an award of exemplary  
9 and punitive damages against Counter Defendant Lorillard in order to set an example and punish  
10 Counter Defendant for undertaking such wrongful conduct and such illegal, and unfair business  
11 practices.

12 13. In addition to actual and punitive damages, Counter Claimant further requests this  
13 Court to award it statutory damages, attorneys fees and costs as provided under and pursuant to  
14 Cal. Bus. & Prof. Code §§ 17200 et. seq.

15 WHEREFORE, Counter Claimant hereby requests judgment against Counter Defendant as  
16 follows:

17 14. That judgment be entered in favor of Counter Claimant and against Counter  
18 Defendant;

19 15. For actual damages all according to proof at trial herein;

20 16. For general and special damages all according to proof at trial herein;

21 17. For consequential damages all according to proof at trial herein;

22 18. For lost profits all according to proof at trial herein;

23 19. For punitive damages all according to proof at trial herein;

24 20. For attorneys fee all according to proof at trial herein;

25 21. For costs of suit herein incurred all according to proof at trial herein;

26 22. For statutory damages, penalties and other sums all according to proof at trial  
27 herein;

28 COUNTER CLAIM

23. For such other and further relief as the Court deems just and proper.

Dated: September 21, 2005

MICHAEL BLUMENFELD  
A Professional Corporation

By: Michael J. Blumenfeld  
Attorneys for Defendants  
and Counter Claimant